

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

4400 BROAD RIVER ROAD  
COLUMBIA, SOUTH CAROLINA 29210

POLICY #: 8.12.16	DATE: 09/01/93	REVISION DATE: 11/06/98
TITLE: IMPLIED CONSENT - BAC DATAMASTER NON-IMPLIED CONSENT TEST		PAGE 1 OF 2
RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF FORENSIC SERVICES LABORATORY		
RELATED STANDARDS/STATUTES/REFERENCES: <u>S.C. Code of Laws</u> , Section 56-5-2950 <u>S.C. Code of Laws</u> , Section 50-21-114 <u>S.C. Code of Laws</u> , Section 55-1-100 <u>S.C. Code of Laws</u> , Section 56-1-2130 <u>S.C. Code of Laws</u> , Section 23-31-410 <u>S.C. Code of Laws</u> , Section 56-1-286 <u>S.C. Code of Laws</u> , Section 56-5-2953		

**GENERAL PURPOSE:** To set forth policies for the administration of implied consent breath alcohol tests.

**POLICY:** The Division will establish procedures for properly conducting implied consent BAC DataMaster breath alcohol tests.

**SPECIFIC PROCEDURES:** A non-implied consent BAC DataMaster test is any breath test on a SLED certified device not performed under the authority of the implied consent laws of South Carolina. Non-implied consent tests may only be performed by certified test operators using proper procedures. If "N" and "RETURN" are entered to the question, "DUI/CDL/BUI/FUI/<21 TEST", along with a "Y" followed by a "RETURN" to the question, "ARE YOU SURE?", a non-implied consent test sequence will begin.

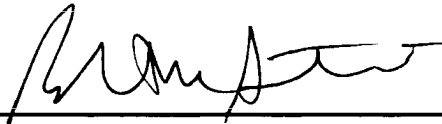
After a high reading on an implied consent test is obtained, the operator may perform a non-implied consent test if he/she is concerned about the subject's health. A high reading is defined as any significant reading that gives the operator concern about the subject's welfare. Typically, this reading will be 0.35% or greater. This test is done solely to ensure that the subject's blood alcohol concentration is decreasing, and the results of this second test should not be used for court purposes. Of course, the operator does not have to wait to perform a second test before seeking medical attention for a subject.

For a non-implied consent test, the checking of the mouth and the use of the minimum twenty minute observation period are recommended to obtain an accurate test. During a non-implied consent test, only test questions (9) - (11) and (27) - (34) will be prompted. The run sequence procedures will be the same as in an implied consent test. If a non-implied consent test is performed, depending on the software version, the words, "NON-DUI TEST/NO ARREST DUI OR FEL DUI" or "NON-IMPLIED CONSENT TEST" will be printed out on the evidence ticket.

If a breath alcohol test is to be administered to a person for use of a firearm while under the influence of alcohol or a controlled substance, this test should be performed as a non-implied consent test. Any officer (if a certified operator), including the arresting officer, may administer the breath alcohol test for use of a firearm while under the influence of alcohol or a controlled substance if the observation period is videotaped. For this type of non-implied consent test, the checking of the mouth and the use of the minimum twenty minute observation period are required (except in refusal situations).

The following warning should be used for breath alcohol tests for the use of a firearm while under the influence of alcohol: "WARNING: Subject Advised: I must now tell you that the arresting officer (or subject, if applicable) has directed me to give you a breath test. I am trained and certified by the South Carolina Law Enforcement Division - SLED - to give this test. You have the right to refuse this test. If you refuse this test upon the request of a law enforcement officer, the refusal to submit to a breath test is admissible into evidence in a criminal proceeding. Whether you take this breath test or not, you will be given reasonable assistance in contacting a qualified person, of your own choosing, to conduct any additional tests. You will have to pay for any additional tests."

BY ORDER OF:

  
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CHIEF OF SLED